

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

ROBERT JAMES STEPHENSON,

Case No. 6:11-bk-18901-ABB
Chapter 7

Debtor.

ORDER

This matter came before the Court on Creditor Brown & Brown of Florida, Inc.'s Objection to Debtor's Claim of Exemptions. (DE 23). An evidentiary hearing was held on June 6, 2012. The parties filed post-hearing briefs and Creditor Centennial Bank joined Brown & Brown's objection ("Creditors"). (DE 97 and DE 98). The Court then entered an order granting the Debtor's request for abatement of an order on the objection and a request for mediation on June 26, 2012, and July 16, 2012, respectively. (DE 105 and DE 117). The mediator filed a report on August 29, 2012, informing the Court the parties held a mediation on August 9, 2012, which resulted in an impasse. (DE 125).

The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing testimony and argument, and being otherwise fully advised in the premises.

Background

The Debtor instituted this individual Chapter 7 case on December 20, 2011 ("Petition Date"). The Debtor and his non-filing spouse were married on October 9, 1999. (DE 94, Exhibit

2). The Debtor claims three bank accounts, a Wells Fargo account ending in #3992 and two BB & T accounts ending in #0062 and #4694, listed in Schedule C are exempt pursuant to 11 U.S.C. §522(b)(3)(B) Tenants by the Entireties.

The Creditor objects to the Debtor's claims of exemptions maintaining these accounts are not held as tenants by the entireties. (DE 23).

Conclusions of Law

All of a debtor's legal and equitable interests in real and personal property, except for those items specifically excluded, become property of the bankruptcy estate on the Petition Date pursuant to § 541(a) of the Bankruptcy Code. Section 522(b)(3)(B) of the Bankruptcy Code allows a debtor to exclude from property of his bankruptcy "any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law." 11 U.S.C. §523(b)(3)(B). Debtors filing for bankruptcy protection in Florida are entitled to the Florida state law exemptions. FLA. STAT. §222.20 (1998).

Jointly titled marital bank accounts are presumed to be tenancy by the entireties if the "six unities" of marriage (the parties must be married at the time the property became titled in their joint names), possession (joint ownership and control), interest (the interests must be identical), title (the interest must have originated in the same instrument), time (the interests must have commenced simultaneously) and right of survivorship are simultaneously present and the debtor does not expressly disclaim the account is held as tenancy by the entireties. *Beal Bank v. Almand & Assocs.*, 780 So.2d 45, 52, 58-60 (Fla. 2001).

An express disclaimer arises if the financial institution affirmatively provides the depositors with the option on the signature card to select a tenancy by the entirety among other options and the depositors expressly select another form of ownership. *Id.* An express disclaimer can also arise with an “express statement signed by the depositor that a tenancy by the entirety was not intended, coupled with an express designation of another form of ownership.” *Id.* at 60.

A rebuttable presumption of tenancy by entirety is created absent an express disclaimer and the simultaneous presence of all six unities. *Id.*; *See also In re Mathews*, 382 B.R. 526, 531 (Bankr. M.D. Fla. 2007). The party opposing entirety ownership must then prove a tenancy by the entirety was not created by a preponderance of the evidence. *Beal Bank*, 780 F.2d. at 58-59; *See also In re Caliri*, 347 B.R. 788 (Bankr. M.D. Fla. 2006).

Wells Fargo Account

The six unities required for the creation of tenants by the entirety ownership did not exist when the Debtor and his spouse created this Wells Fargo account. The Debtor and his spouse opened this checking account on June 22, 1999, prior to their marriage. (DE 94, Exhibit 3). The fundamental unity of marriage did not exist when the accounts were opened and ownership of the accounts as tenants by the entirety was a legal impossibility. *Beal Bank*, 780 F.2d. at 58-59; *See also In re Mathews*, 382 B.R. at 798. The date the account is opened or established is the operative date for establishing ownership of a financial account. *Id.*

A property interest acquired prior to marriage can be converted to an interest held as tenants by the entirety through an assignment executed subsequent to the marriage. *In re Mathews*, 382 B.R. at 798 (*citing In re Kossow*, 325 B.R. 478, 487 (Bankr. S.D. Fla. 2005)). Debtor maintains this conversion took place when a replacement signature card was executed

December 3, 2002, signed by Debtor's spouse with the account titled Robert J. Stephenson or Courtney S. Stephenson. (DE 94, Exhibit 3). Debtor specifically states the signature card did not disclaim tenancy by entireties when in fact the replacement signature card includes the following language:

If there are two or more individuals named in the title to the account, the parties agree that the account is a multiple party deposit account owned as Joint Tenants with Right of Survivorship unless another manner of ownership is specifically set forth in connection with the account legal title on this card. *The Depositors and Bank agree that any ownership of this deposit account by a husband and wife is not as tenancy by entireties.* (emphasis added).

The Debtor's argument is unpersuasive. The relevant time for establishing the unities of entireties ownership is when the account is opened. *Beal Bank*, 780 F.2d. at 58-59; *See also In re Mathews*, 382 B.R. at 798. The subsequent signature card is not sufficient to create a tenancy by the entirety account because the signature card contains an "express statement signed by the depositor that a tenancy by the entireties was not intended, coupled with an express designation of another form of ownership." *Id.* at 60. The language on this signature card is notably distinguishable from the one in *Beal Bank* because it adds the language specifically stating the account is not held as tenancy by entireties rather than simply designating the account as joint tenancy with the right of survivorship. *Id.* at 61. This language is sufficient to constitute an express disclaimer, which ends the inquiry as to whether a tenancy by entireties was intended. *Id.* at 60.

The Debtor lists the balance as \$170,717.59. (DE 1, Schedule C). The Creditors have established the accounts are not entireties property and the Debtor's interest in the accounts constitutes non-exempt property of the estate. The Debtor, on the Petition Date, owned a divisible one half interest in this account.

BB&T Accounts

The Debtor and Spouse opened the BB & T checking account and the BB & T savings account on May 5, 2009, subsequent to their marriage. (DE 94, Exhibit 4). The Personal Signature Card set forth seven choices for ownership of the account. Ownership of the account could be designated, by checking the appropriate box, as “Single-Party Account,” “Single-Party with Payable on Death,” “Multiple-Party Account with Right of Survivorship,” “Multiple-Party Account without Right of Survivorship,” “Trust Account,” or “Tenancy by the Entirety.” *Id.* A description of each option is provided. *Id.* The Debtor and his spouse elected “Multiple-Party Account with Right of Survivorship.” *Id.*

An express disclaimer of intent arises if the financial institution affirmatively provides the depositors with the option on the signature card to select a tenancy by the entireties among other options and the depositors expressly select another form of ownership. *Beal Bank*, 780 So.2d at 58-60. The Debtor and his spouse elected another option creating this express disclaimer of intent. This express disclaimer of tenancy by the entireties ends the inquiry as there is no evidence of any other signature cards being executed for this account electing tenancy by the entireties at a later date. *Id.* at 60.

The Debtor lists the balances in these two accounts \$1,000.00 in each. (DE 1, Schedule C). The Creditors have established the accounts are not entireties property and the Debtor’s interest in the accounts constitutes non-exempt property of the estate. The Debtor, on the Petition Date, owned a divisible one half interest in these accounts.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Creditor’s objections to the Debtor’s claims of exemption in the Wells Fargo account ending in #3992 and the two BB & T

accounts ending in #0062 and #4694 are hereby **SUSTAINED** as to a one half interest in these accounts and such items constitute non-exempt property of the estate; and it is further

ORDERED, ADJUDGED and DECREED the Debtor's exemption claims relating to the Wells Fargo account ending in #3992 and the two BB & T accounts ending in #0062 and #4694 are hereby **DISALLOWED**.

Dated this 4th day of October, 2012.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge